

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re DEBORAH BELCHER,

No. C 12-02144 YGR (PR)

**ORDER TERMINATING PENDING  
MOTION; INSTRUCTIONS TO CLERK**

Plaintiff Deborah Belcher, a state prisoner, filed a document which was opened as a *pro se* action under 42 U.S.C. § 1983. In an Order dated June 8, 2012, the Court dismissed this action because Plaintiff had not exhausted California's prison administrative process. The dismissal was without prejudice to refiling after Plaintiff exhausted all available administrative remedies. *See McKinney v. Carey*, 311 F.3d 1198, 1199-1201 (9th Cir. 2002) (action must be dismissed without prejudice unless prisoner exhausted available administrative remedies before he filed suit, even if prisoner fully exhausts while the suit is pending). Also on June 8, 2012, the Clerk of the Court entered judgment, terminated all pending motions, and closed the file.

Thereafter, on June 11, 2012, Plaintiff filed a new complaint and a new *in forma pauperis* (IFP) application. Plaintiff filed a letter stating she has "now exhausted all administrative remedies." (Pl.'s letter dated July 12, 2012 at 1.) These documents were all filed in the present action, which, as mentioned above, has been dismissed without prejudice to refiling the complaint in a new action. Therefore, the Court finds that these documents should have been filed in a new action. Accordingly, the Clerk is directed to remove Plaintiff's new complaint form and IFP application filed on June 11, 2012 (docket nos. 7, 8) from this action, to file it in a new action, and to docket it as Plaintiff's "Complaint" and his "Motion for Leave to Proceed *In Forma Pauperis*." The Clerk is further directed to mark both documents as filed on June 11, 2012, the date they were received by the Court. The Court will review these documents in a separate written Order in Plaintiff's new action. The Clerk shall terminate all pending motions (docket no. 8) as no longer pending in this case.

IT IS SO ORDERED.

DATED: July 24, 2012

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE